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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/743,577	03/12/2001	Herbert Schlachter	0147-0220P	5756

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EXAMINER

GOLLAMUDI, SHARMILA S

ART UNIT PAPER NUMBER

1616

DATE MAILED: 09/09/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/743,577

Applicant(s)

SCHLACHTER, HERBERT

Examiner

Sharmila S. Gollamudi

Art Unit

1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 June 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 and 17-39 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14 and 17-39 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Extension of Time and Amendment B filed June 3, 2002 are acknowledged. Claims 1-14 and 17-39 are included in the prosecution of this application. Claims 15-16 are cancelled.

Response to Arguments

Applicant's arguments have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Hillebrand (5296500).

Hillebrand teaches a method of regulating wrinkles with a topical composition containing N-acetyl-L-cysteine, zinc oxide, and sodium hydroxide (example 4).

Claims 1-4, 6-7, 9, 1, 14, 18-25, 28-31, 34, and 38-39 are rejected under 35 U.S.C. 102(b) as being anticipated by Neigut (5378461).

Neigut teaches a topical composition for skin damage containing propylene glycol, vitamins, linoleic acid, L. cysteine, zinc oxide, sodium selenite, and cornstarch (ex. 5).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 9-12, 14, 18-20, and 35-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over EP 0281812 in view of Gruber (4593043).

EP teaches a composition for the treatment of acne containing a kortalolytic agent such as benzoyl peroxide, an astringent such as zinc oxide and an anti-inflammatory such as cysteine, leucine, etc. (claims 1, 2, 7, 10-11, and examples). EP teaches various pharmaceutical carriers and solvents (column 6).

EP does not teach a secondary plant substance.

Gruber teaches a dermatological composition for treating acne containing benzoyl peroxide and aloe (abstract). The peroxide compound may have any organic substitute for the R group (col. 7, lines 20-25). The reference teaches the use of aloe for many years for itching, sunburn, and skin blemishes (col. 3, lines 13-18). The art teaches aloe for its antibacterial properties, moisturizing properties, healing, and analgesic properties. Gruber teaches aloe for reducing the skin irritations caused by the peroxide compound (col. 4, lines 25-50).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use aloe in EP's formulation to soothe and heal the skin irritation caused by the actives in the composition as taught by Gruber. Further motivation to add aloe is for its antibacterial effect, which would have an additive effect in fighting acne.

Claims 1, 2, 9-11, 14, and 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hillebrand (5296500) in view of Gruber (4593043).

Hillebrand teaches a method of regulating wrinkles with a topical composition containing N-acetyl-L-cysteine, zinc oxide, and sodium hydroxide (example 4).

Hillebrand does not teach the use of a secondary plant substance in the formulation.

Gruber teaches a dermatological composition for treating acne containing benzoyl peroxide and aloe (abstract). The reference teaches the use of aloe for many years for itching, sunburn, and skin blemishes (col. 3, lines 13-18). The art teaches aloe for its antibacterial properties, moisturizing properties, healing, and analgesic properties.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use aloe in Hillebrand's composition since Gruber teaches the age-old practice of using aloe to treat various skin disorders. One would be motivated to do so since aloe is known for its moisturizing effect, which would have an additive effect in fighting wrinkles.

Claims 8 and 32-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Neigut (5378461) in view of Gruber (4593043).

Neigut teaches a topical composition for skin damage containing propylene glycol, vitamins, linoleic acid, L. cysteine, zinc oxide, sodium selenite, and cornstarch (ex. 5).

Neigut does not teach an additional antibacterial agent.

Gruber teaches a dermatological composition for treating acne containing benzoyl peroxide and aloe (abstract). The reference teaches the use of aloe for many years for itching, sunburn, and skin blemishes (col. 3, lines 13-18). The art teaches aloe for its antibacterial properties, moisturizing properties, healing, and analgesic properties.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use aloe in Neigut's formulation to soothe, moisturize, and heal the skin as taught by Gruber. Further motivation to do so being that aloe would be multi-functional in that it would soothe skin damage but it would also have an antibacterial role in preventing infection of injured or ulcerated skin (case study III of Neigut).

Claims 5 and 26-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Neigut (5378461) in view of Ribier et al (5601833).

Neigut teaches a topical composition for skin damage containing propylene glycol, vitamins, linoleic acid, L. cysteine, zinc oxide, sodium selenite, and cornstarch (ex. 5).

Neigut does not teach trace elements.

Ribier et al teaches a protective and nutritive topical composition for the skin. Ribier teaches the use of trace elements for deep down nutrition of the skin (col. 7, lines 60-62).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to add a trace element in Neigut's composition for skin damage in order to provide deep-down nutrition to the skin cells as taught by Ribier; therefore protecting and firming the skin.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sharmila S. Gollamudi whose telephone number is 703-305-2147. The examiner can normally be reached on M-F (7:30-4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jose Dees can be reached on 703-308-4628. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3014 for regular communications and 703-305-3014 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 709-308-0196.

SSG

~~SSG~~

September 4, 2002


JOSE C. LEE
SUPERVISORY PATENT EXAMINER

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